

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

May 13, 2003

Chairman S. Schiller called the meeting to order at 4:02 p.m., and roll was taken.

MEMBERS PRESENT: C. Kufta, S. Schiller, R. Hilt, R. Schweifler, D. Newsome, J. Clingman-Scott

MEMBERS ABSENT: None

STAFF PRESENT: D. Steenhagen, H. Griffith

OTHERS PRESENT: J. Clingman-Scott, 3485 Lake Dunes; M. Spaniola, 1129 Third; M. May, 2155 Lakeshore; B. Link, 1125 Third; J. O'Malley, 1107 W Hile; D. Clarke, 2147 Bluffton.

APPROVAL OF MINUTES

A motion that the minutes of the regular meeting of April 15, 2003 be approved, was made by R. Hilt, supported by C. Kufta and unanimously approved.

PUBLIC HEARINGS

Hearing, Case 2003-6: Variance request to reduce the number of parking spaces required for 1115 Third St., by the Neighborhood Investment Corporation. D. Steenhagen presented the staff report. The Neighborhood Investment Corporation (NIC) has recently purchased the building on this property and is in the process of rehabbing it for office use with residential apartments on the upper floor. The applicant has received site plan approval to construct and pave a parking area behind the building. The proposed parking area is approximately 66 feet by 63.5 feet in size and contains eight (8) parking spaces along with a maneuvering lane, dumpster enclosure, and leaching area for stormwater retention. There are four (4) proposed residential units on the property, which requires eight (8) off-street parking spaces. The proposed office spaces contains 3,150 square feet of usable floor area, which requires eight (8) off-street parking spaces for a total of sixteen (16) required spaces for the property. The ordinance does allow up to 30% of the parking requirement for non-residential uses to be met with on-street parking spaces since this site is in the new downtown parking overlay district. This would allow 3 of the office spaces to be provided on-street. All residential spaces must be off-street spaces since no overnight parking is allowed on any street in the City between April 15 and November 15 of each year. Even with the use of on-street spaces, the site is still short five (5) spaces for the office use since the residential parking requirements take up the entirety of the off-street parking provided in the proposed lot to the rear of the building. The applicant is asking for the number of parking spaces required for the residential uses to be lowered so that some of the parking spaces for the office

use can be provided in the rear parking area. The downtown parking overlay allows for off-street parking for non-residential uses to be provided within 1,000 feet of the site, provided that an irrevocable shared parking agreement is in place. There is no requirement that a property owner has to use this option for parking, but the ordinance does allow for it. Staff has received a phone call from Mark Spaniola, owner of the property at 1129 Third St. He feels that there is not enough parking for the Third St. businesses (his included) already. He would like to pursue finding additional parking for his property.

J. Clingman-Scott stated declared a conflict of interest and would abstain from discussion or voting on this item. She would be speaking instead as the applicant.

C. Kufta asked for clarification regarding the parking requirements. D. Steenhagen stated that according to the zoning ordinance, general office space is required to have 1 space per 400 sq. ft. of usable floor area, which excludes closets, bathrooms, or stairs. S. Schiller asked if there was a difference between office and retail. D. Steenhagen stated that there was. Retail would be required to have 1 space per 300 sq. ft. of usable floor area. J. Clingman-Scott stated that this is a unique area. They are working on renovating the historic building. The housing units are very small. The lease agreement would only allow for 1 parking space per unit. The parking problem is caused by the history of the area. C. Kufta asked what the square footage of the apartments would be. J. Clingman-Scott stated that the biggest apartment would be about 600 sq. ft. and the smallest would be about 400 sq. ft. C. Kufta stated that according to the pictures, it looked like there were 3 units in the building on the main floor. J. Clingman-Scott stated that there are. C. Kufta asked the applicant if they had looked at purchasing more property to accommodate parking. J. Clingman-Scott stated that they are working on a land swap for the parking in the rear of the building. R. Hilt stated that he is anxious to see this project succeed. He is concerned with reducing the parking spaces since there is already a lack of sufficient parking space available now. He also stated that the reduction would be forever and that there are no guarantees that the tenants would only have 1 vehicle. J. Clingman-Scott stated that the Neighborhood Investment Corp. would be renting to a special population that isn't mobile. The mode of transportation would mainly be public transportation. R. Hilt stated that he is also concerned that this would create more requests for variances in the area. He asked the applicant if they had spoken with Betten regarding their lease on the property across the street. There may be a possibility of leasing the property for parking. J. Clingman-Scott stated that the current lessee still has about 2 years left on their lease. She wasn't sure if Betten would be willing to give up their lease. M. Spaniola stated that he lives and does business on Third St. He has no problem with the development. He is concerned with the parking. He has no parking for his property. M. May stated that she also has a business on Third St. She had e-mailed staff that she would like to see the Walt Plant building renovated. She originally had no problems with this request. She had since talked with other people in this area and now has the same concerns regarding the parking situation. She was also concerned about the removal of the 3 hr. parking signs that had been removed from the Third St. area. B. Link stated that he had to make arrangements for parking. He has enough parking for his property on Third St. M. Spaniola stated that he would be willing to enter into a parking agreement with his neighbors.

A motion to close the public hearing was made by D. Newsome, supported by R. Hilt and unanimously approved.

R. Hilt asked why the parking signs had been removed. D. Steenhagen stated that she didn't know. She had forwarded this to the Traffic Committee and it is on their agenda for their next meeting. The committee meets on the 3rd week of the month. R. Schweifler asked what the exact square footage of useable space for this property was and who came up with the number. D. Steenhagen stated that the 3,150 sq. ft. was the number that was given to her. J. Clingman-Scott stated that the number included the bathrooms. There are 3 restrooms and the amount of usable floor space may be reduced by about 60 sq. ft. for the restrooms.

R. Schweifler stated that this is a difficult decision for the applicant and the neighborhood. He proposed the following findings of fact. There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district due to the use and the history of the building. The original use was retail, which is a more intensive use rather than office space. Retail would require more parking and the new use is less intensive. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because the restriction of the number of vehicles allowed for the apartments. This would benefit the surrounding property owners. The authorizing of the variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property or by any previous owner because the ordinance came after the building was built. The building was built during a time when families wouldn't have multiple vehicles. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because the applicant would still rehabilitate the building and utilize it either way. The requested variance is the minimum action required to eliminate the difficulty because the area is unique.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to reduce the off-street parking requirements at 1115 Third St. from fifteen spaces to twelve spaces, be approved, based on the findings of fact, with the following conditions attached: 1) The variance is recorded with the deed to keep record of it in the future. 2) The master lease will restrict the vehicles allowed to be parked on the property by the lessee to 1 per apartment, was made by R. Schweifler and failed due to lack of a second.

R. Hilt stated that he didn't feel that the variance would solve the parking problem. He felt that parking would be better if they could get a lease for the parking lot across the street. He felt that approving the variance would add to the difficulty for other property owners. He proposed the following findings of fact. There are not exceptional or extraordinary circumstances or conditions applying to this property that do not apply generally to other properties in the same zoning district due to the history of the area. The variance is not necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity since there is a parking problem in this area for all properties. The authorizing of the variance will be of substantial detriment to adjacent property and will materially impair the purposes of this chapter or the public interest by making a difficult parking situation even more difficult. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner.

The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. The requested variance is not the minimum action required to eliminate the difficulty because there are other options for parking that may be looked into.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to reduce the off-street parking requirements at 1115 Third St. from fifteen spaces to twelve spaces, be denied, based on the findings of fact, was made by R. Hilt, supported by C. Kufta and approved with R. Schweifler voting nay and J. Clingman-Scott abstaining.

Hearing; Case 2003-7: Variance request to reduce the rear setback requirement to 9.5 feet for an addition at 1650 Beach St., by Ronald O. Olson. D. Steenhagen presented the staff report. This property owner received a variance in 1997 for a 10'x12' addition on the rear of the house. The variance allowed the rear setback to be reduced to 17 ½ feet for that addition. The addition was constructed on the home as approved. The applicant wishes to construct a second addition onto the home. The addition would be in-line with the sides of the existing home, so does not require a side setback variance, even though the existing side setbacks are nonconforming. However, the rear setback would be reduced to 9 ½ feet, which is below the 17 ½ feet approved by the previous variance. This part of the City contains many houses built on small lots and somewhat crowded together. Most of the homes in this area do not meet current setback requirements in one way or another, making adding on to them very difficult for the homeowners. Many of these homes were originally built as small cottages and therefore do not contain much square footage. Staff has not received any phone calls or letters on this case.

R. Olson stated that the expansion would be for a bedroom. He stated that he had spoken with some of the neighbors who asked him what his plans were and they seemed fine with what his plans were. C. Kufta asked if the applicant knew the dimensions of the lot. R. Olson stated that he wasn't sure. S. Schiller asked staff if the information could be obtained easily. D. Steenhagen stated that it would and left to get the information. D. Newsome asked what the total square footage of the addition would be. R. Olson stated that it would be a 20 ft. by 30 ft. extension minus the portion that would protrude into the area from the house (the expansion is "L" shaped). R. Schweifler asked the applicant if he was provided a copy of the "Findings of Fact" that the commission members would be using to determine if this request should be approved. R. Olson stated that he only received what came in the mail. R. Schweifler asked if he would be able to help the commission members with this or if the applicant would prefer to have the request tabled until the next meeting. R. Olson stated that he would prefer to get this completed at this meeting since his contractors are getting ready to do the work. D. Steenhagen stated that the lot size is 50 ft. by 108 ft. according to the Assessor's Office. She asked the applicant if he was aware that his property is located in a critical dunes area and if he had spoken with anyone from the MDEQ because he may need permits from them also. R. Olson stated that he wasn't aware of this.

A motion to postpone this request until the end of the meeting so the applicant would have time to go over the "Findings of Fact", was made by R. Schweifler, supported by J. Clingman-Scott and unanimously approved.

Hearing; Case 2003-8: Use Variance request to allow 939 Jefferson St. to be rented for single-family residential purposes in the B-3, Central Business, zoning district, by Jack O'Malley. D. Steenhagen presented the staff report. This property is located downtown, kitty-corner to City Hall and across the street from McDonalds. The subject property is a nonconforming flag (or 'L-shaped'). The building appears to be well maintained. The applicant has stated that he has been unable to rent the building to a successful commercial business, after many years of trying. He has a renter interested in the home for single-family residential purposes and would like to be able to rent the home as a single unit, rather than trying to rent out commercial space on the main floor with an upstairs apartment, as would be permitted in the B-3 district. The building is located in the heart of the downtown area, with mostly commercial and governmental office buildings surrounding it. However, there are two other structures on this block which are residential in appearance. The property at 943 Jefferson St. is a legally nonconforming rooming house, and the property at 164 W. Muskegon Ave. seems to be a legally nonconforming single-family residence. It is unknown at this time how the 'turnback' of Muskegon and Webster will affect the general character of the area once Shoreline Dr. East has been completed. It is possible that many of the existing commercial uses will relocate closer to the new business route and that the Muskegon/Webster corridor will become more of a residential neighborhood. A single-family home is required to have two (2) paved, off-street parking spaces. The applicant needs to indicate where these spaces would be provided if the use variance is approved. The lot is flag (L-shaped) and does appear to take access off of the adjacent alley. Paved parking could be provided in this area, behind the building, with a paved drive off of the alley. Remember that a majority vote of 2/3 of the members of the ZBA is required in order to pass a use variance. This means that at least 4 members of the ZBA must vote 'yes' in order for the use variance to be approved. Staff has not received any phone calls or letters on this case.

R. Schweifler asked if the "L" shape was paved. D. Steenhagen stated that it wasn't. J. O'Malley stated that the house is laid out as a single-family home. He was told that due to the zoning of the property, he would be allowed to rent the lower portion as office space with an apartment upstairs. He didn't want to separate the home. He has spoken with Section 8 housing. He was informed that there is a demand for 4 bedroom homes. If the use variance is granted, then he would be able to work with Section 8 to get a good tenant. D. Newsome asked what size the property is behind the home. J. O'Malley stated that it is about 30 ft. along the alley, 50 ft. across and narrows to 30 ft. on Jefferson.

A motion to close the public hearing was made by D. Newsome, supported by R. Hilt and unanimously approved.

R. Hilt stated that he likes to see single-family homes in the downtown area. It would be logical to have the home as a single-family home. He has no problem with approving the request. J. Clingman-Scott asked if the variance would stay with the property. D. Steenhagen stated that it would. J. Clingman-Scott asked if the property could be converted back to the current use at a later date. D. Steenhagen stated that it could, based on what the current zoning is at that time. The variance would allow the property to be used as residential. C. Kufta asked if the benefits of a business would be removed if the variance is approved. D. Steenhagen stated that once the variance is there, the property owner may use it or they may not if they want to. J. Clingman-Scott proposed the following findings of fact. The property could not be used (put to a

reasonable use) for the purposes permitted in that zone district because the market conditions aren't favorable. The plight is due to unique circumstances peculiar to the property and is to the general neighborhood conditions. The proposed use would not alter the essential character of the area and will not materially impair the purposes of this ordinance or the public interest because this is a lower density use. The alleged hardship is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner. The alleged hardship is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because the hardship is caused by the ordinance. The requested variance is the minimum action required to eliminate the hardship. The use variance does not permit a use specifically identified by this Ordinance as a use excluded from the particular zone in which requested because single-family homes are not specifically prohibited as a principal use in the B-3 district. The extent to which the ordinance protect users or neighbors from threats to health, safety and welfare has been considered. The proposed use is not considered to be a threat to health, safety or welfare of future residents or neighbors because there are neighboring properties with similar residential use. The proposed use is not considered a nuisance because it would blend with the neighboring uses.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the use variance to permit the building at 939 Jefferson St. to be rented for single-family purposes, be approved, based on the findings of fact. With the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) Two paved parking spaces will be provided in the area behind the building, with a paved drive off of the existing alley. Any necessary permits for the construction of the drive and parking area will be obtained by the property owner, was made by J. Clingman-Scott, supported by R. Schweifler and was approved with C. Kufta voting nay.

Hearing: Case 2003-9: Variance request to reduce the front setback requirement to 1 foot 5 inches for a porch addition at 2147 Bluffton Ave., by Douglas Clarke. D. Steenhagen presented the staff report. This home is much closer to the road than other existing homes on the block and in the surrounding area. The existing front setback of the home is approximately 13 feet, which does not comply with the current ordinance requirement that front setbacks be 15 feet. The ordinance may have had different requirements at the time that the home was built. Unless there is evidence that the setback violated existing requirements at that time, staff considers the home to be a legally nonconforming structure in terms of the front setback. The applicant is proposing a covered front porch, which is considered to be part of the structure and therefore is required to meet the same setback requirements as the principal structure itself, in this case 15 feet. If the porch were uncovered (ie., a deck) then it would be allowed to encroach 5 feet into the front setback, which in this case would allow a 10-foot front setback for a deck. Since the current front setback of the home is 13 feet, this would only allow 3 feet of deck area on the front of the home. The distance from the front property line to the curb (commonly called the 'terrace') is 22 feet for this property. This is a larger terrace area than on average throughout most of the city, especially in older areas. There is no sidewalk currently constructed on Bluffton Ave, so the entire terrace area is greenspace at this time. If sidewalk were to be provided on this property in the future, there would be sufficient space in the terrace for its construction. Staff has received one phone call, from Marvin Groszowski, 2195 Surfwood Dr., in favor of the variance.

J. Clingman-Scott asked if the home was 22 ft. from the property line to the street. D. Steenhagen stated that it was. D. Clarke stated that the street was built after the home was there. C. Kufta asked if the front edge of the home was aligned with the surrounding homes in the area. D. Clark stated that the home is closer to the street than the neighboring homes in the area. He gave an idea of where the neighboring homes were located in relation to the sketch of his home. C. Kufta asked which direction the porch would be in relation to the home. D. Clarke stated that it would be in the front of the home, which faces east.

A motion to close the public hearing was made by R. Schweifler, supported by D. Newsome and unanimously approved.

R. Schweifler stated that the applicant has proven the findings of fact and would agree with him. There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the surrounding homes were built further back on their properties. The surrounding property owners are able to build front porches, while staying within the current code. A variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because if the variance is granted, the applicant would have the same minimum space in which to build a front porch as the other properties surrounding them. The addition of the front porch would afford them better enjoyment of the front yard, which would not be possible without a variance. The authorizing of a variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the proposed addition of a porch will not distract from the site views of the neighbors. The porch would be open and not closed in. The porch would be an attractive addition to the house and to the neighborhood as a whole. Several houses in the neighborhood have porches and this would blend in nicely. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because their home was placed in its current location prior to the construction of Bluffton Avenue. Therefore, the building of the road put the front set-back of the home out of compliance. The majority of the homes built on Bluffton Avenue were constructed in the 1960's and 1970's, and they were able to build further back on their properties, thus meeting current code requirements. That the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because there is no profit motive or reduction in expense. There is an expense to add the porch. He would like to bring back the historic feel and look of the home. People used to spend more time on their front porches, enjoying and interacting with their neighborhoods. Many homes are now oriented towards the backyards, where little neighborhood interaction can take place. The requested variance is the minimum action required to eliminate the difficulty because he is asking for the minimum amount needed to add a porch to the front of the house. It is not practical or cost prohibitive to move the home to the back of the lot. Obtaining a variance is the only possibility he has to be able to add a porch to the front of the house. C. Kufta suggested adding that the easterly edge of the porch would not protrude beyond the easterly point of the homes within 200 ft. R. Schweifler stated that this home already protrudes beyond the surrounding homes. J. Clingman-Scott asked if the neighbors were notified of this request. D. Steenhagen stated that the neighbors within 300 ft. were notified.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to reduce the front setback to one foot five inches for a porch addition at 2147 Bluffton Ave., be approved, based on the findings of fact. With the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by R. Schweifler, supported by J. Clingman-Scott and was approved with R. Hilt and C. Kufta voting nay.

Hearing; Case 2003-7: Variance request to reduce the rear setback requirement to 9.5 feet for an addition at 1650 Beach St., by Ronald O. Olson (continued). C. Kufta asked questions regarding the DEQ and critical dunes area. He asked if the DEQ would supercede the ZBA. D. Steenhagen stated that the DEQ may have some requirements, but the applicant would still have to meet the city zoning requirements.

R. Schweifler left at 5:30 p.m.

R. Olson went over the finding of facts. There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district due to the lack of space. The area started out as summer cottages. A dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because other properties in the area have adequate space. Authorizing of a variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest due to the neighbor in the back has a fence and he would be more upset if Mr. Olson were to build up and block his view of the lake. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner and the neighbors are in favor of it. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner as he doesn't intend to sell or move out of the property. The requested variance is the minimum action required to eliminate the difficulty. C. Kufta asked how far the neighbor's deck is to the fence as the picture looked to be about 10 ft. if not more. R. Olson stated that he wasn't sure, but he agreed that it was more than 10 ft.

A motion to close the public hearing was made by R. Hilt, supported by D. Newsome and unanimously approved.

J. Clingman-Scott was working on calculating the square footage of the home in relation to the square footage of the lot. She was concerned about covering too much of the property with the home. She had no problems with the request since she figured the home would take up about 27% of the property.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to reduce the rear setback to 9 ½ feet for an addition at 1650 Beach St., be approved, based on the findings of fact. With the following conditions attached: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by J. Clingman-Scott,

supported by D. Newsome and was unanimously approved.

OTHER

Bylaws – D. Steenhagen provided the commission members with a copy of a revised ZBA/PC application. She pointed out the different items that had been changed. She also provided the members with a copy of the “Findings of Fact” phrased into questions for the applicant to answer. She also paraphrased the question to make it easier to understand. This way the applicant would also know what the commission members look at in order to approve a variance. She will also give the questionnaire to a couple of previous applicants for their input. She would also like the commission members to provide her with any input they have regarding these items so they may be discussed at the next meeting.

There being no further business, the meeting was adjourned at 6:00 p.m.

hmg
5/13/03